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EPISTAR CORPORATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

EPISTAR CORPORATION,

Plaintiff,

v.

PHILIPS LUMILEDS LIGHTING
COMPANY, LLC,

Defendant.

Case No. C 07-5194 CW

**DECLARATION OF STEVEN D.
HEMMINGER IN SUPPORT OF
EPISTAR CORPORATION'S
OPPOSITION TO PHILIPS
LUMILEDS LIGHTING COMPANY,
LLC'S MOTION TO CONTINUE
THE INITIAL CASE
MANAGEMENT CONFERENCE**

PHILIPS LUMILEDS LIGHTING
COMPANY, LLC,

Counterclaim Plaintiff,

v.

EPISTAR CORPORATION,

Counterclaim Defendant.

1 I, Steven D. Hemminger, declare as follows:

2 1. I am a partner with the law firm of Akin Gump Strauss Hauer & Feld LLP,
3 counsel to Plaintiff Epistar Corporation (“Epistar”) in this action. I am a member in
4 good standing of the State Bar of California and the bar of this Court. I have personal
5 knowledge of the facts set forth in this declaration, except where otherwise stated, and
6 could testify competently to such facts under oath if called as a witness.

7 2. The Court entered a Case Management Scheduling Order For Reassigned
8 Civil Case on December 20, 2007. A true copy of the Case Management Scheduling
9 Order For Reassigned Civil Case is attached as Exhibit A.

10 3. On January 22, 2008, Lumileds filed a Notice of Motion to Stay. A true
11 copy of Lumileds’ Notice of Motion for Motion to Stay is attached as Exhibit B.

12 4. On December 28, 2007, Andrew Wu, counsel for Lumileds, telephoned
13 Epistar’s counsel, Yitai Hu, and first proposed staying the case “until completion of the
14 appeal of the ITC case [between Epistar and Lumileds].”

15 5. On January 4, 2008, Mr. Wu emailed Mr. Hu after the case had been
16 reassigned stating, “now that the Unfair Competition case has been related to the earlier
17 cases, we think they should all be stayed until completion of the appeal of the ITC
18 case.” A true copy of his January 4, 2008 email is attached as Exhibit C.

19 6. On January 7, 2008, during a teleconference with Mr. Wu, I explained that
20 the present case should not be stayed unless there was some factual or legal basis to do
21 so. Moreover, I stated that the two cases, beyond having common parties, involved
22 different legal claims and thus this action should not be affected by the ITC action. In
23 response to comments from Mr. Wu concerning an overlap of discovery, I explained that
24 this was not a basis to stay since any discovery taken in the present case could be used
25 in the other case. Mr. Wu did not provide the basis for Lumileds’ Motion to Stay except
26 to say that the Related Case Motion provided the basis for the motion. I indicated that I
27 did not understand how those arguments applied to a motion to stay and what the legal
28

1 basis for the request was. The discussion concluded that, without more detail, Epistar
2 could not agree to stay the action.

3 7. On January 9, 2008, Mr. Wu sent an email proposing for the first time to
4 postpone the initial CMC and again reconsider staying the case. Mr. Wu stated that
5 Lumileds' reasons for a stay were already "sufficiently set forth in Lumileds' related
6 case motion" and that it would be "efficient" to delay the initial CMC until the Court
7 had an opportunity to consider and rule on Lumileds' Motion to Stay. A true copy of the
8 January 9, 2008 email is attached as Exhibit D.

9 8. On January 11, 2008, I responded to Mr. Wu and reiterated that I did not
10 understand how the arguments made in Lumileds' related case motion supported a
11 request for a stay and that unless Lumileds provided support for its motion to stay,
12 Epistar saw no reason to continue the initial CMC. A true copy of the January 11, 2008
13 email is attached as Exhibit E.

14 9. At Lumileds' request, the parties stipulated to and the Court granted an
15 extension of time for Lumileds to answer Epistar's Complaint. A true copy of the Joint
16 Stipulation and Order Extending Deadline for Lumileds to Answer Complaint, dated
17 November 26, 2007 is attached as Exhibit F.

18 10. I am informed that on January 23, 2008, Amy Spicer, Lumileds' counsel,
19 telephoned Lenny Huang, counsel for Epistar, to meet and confer as required under
20 Rules 26(f) of the Federal Rules of Civil Procedure. Counsel for both parties agreed to
21 select mediation as the parties ADR option and discussed discovery issues including
22 discovery request limitations, possible scheduling deadlines, and preparation of draft
23 Joint Case Management Statements and Initial Disclosures.

24 I declare under penalty of perjury under the laws of the United States that the
25 foregoing is true and correct. Executed on this 24th day of January, 2008, at Palo Alto,
26 California.

27 /s/
28 Steven D. Hemminger